

\*\*\* CONFIDENTIAL ATTORNEYS EYES ONLY \*\*\*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE )  
COMPANY, INC., ) Case No.:  
 ) 3:21-cv-03496-VC  
Plaintiff, )  
 ) Lead Case No.:  
vs. ) 3:21-cv-03825-VC  
 )  
INTUITIVE SURGICAL, INC., )  
 )  
Defendant )  
 )  
IN RE: DA VINCI SURGICAL ROBOT )  
ANTITRUST LITIGATION )  
 )  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS )  
 )

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30(b)(6) DEPOSITION OF:

KEITH ROBERT JOHNSON

THURSDAY, OCTOBER 27, 2022

9:06 a.m. Mountain Standard Time

REPORTED BY:  
Vickie Blair  
CSR No. 8940, RPR-CRR  
JOB NO. 5539883  
PAGES 1 - 122

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Deposition of KEITH ROBERT JOHNSON, the witness, taken  
on behalf of the Defendant, on Thursday,  
October 27, 2022, 9:06 a.m. Mountain Standard Time,  
before VICKIE BLAIR, CSR No. 8940, RPR-CRR.

APPEARANCES OF COUNSEL VIA ZOOM:

FOR PLAINTIFF/COUNTER-DEFENDANT SURGICAL INSTRUMENT  
SERVICE CO. INC.:

HALEY GUILIANO LLP

BY JOSHUA VAN HOVEN, Partner

111 North Market Street, Suite 900

San Jose, California 95113

+1 669 213 1061

joshua.vanhoven@hglaw.com

FOR DEFENDANT INTUITIVE SURGICAL, INC.:

COVINGTON & BURLING LLP

BY ISAAC D. CHAPUT, Associate

415 Mission Street

Suite 5400

San Francisco, California 94105-2533

+1 415 591 7020

ichaput@cov.com

COVINGTON & BURLING LLP

BY AUSTIN S. MARTIN, Associate

One CityCenter

850 Tenth Street, NW

Washington, D.C. 20001-4956

+1 202 662 5094

amartin@cov.com

1 APPEARANCES OF COUNSEL VIA ZOOM: (Continued)  
2 FOR THE PROPOSED CLASS:

3 BONI, ZACK & SNYDER LLC  
4 BY JOSHUA D. SNYDER, Partner  
15 St. Asaphs Road  
Bala Cynwyd, Pennsylvania 19004  
5 (610) 822-0203  
(610) 822-0206  
6 jsnyder@bonizack.com  
7

8 ALSO PRESENT:

9 RAMON A. PERAZA, Videographer  
10  
11  
12  
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## I N D E X

WITNESS	EXAMINATION	PAGE
KEITH ROBERT JOHNSON	(MR. CHAPUT)	7

## INFORMATION REQUESTED

None

## QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER

None

## E X H I B I T S

EXHIBIT NO.	PAGE	DESCRIPTION
Exhibit 135	10	Defendant Intuitive Surgical, Inc.'s Notice of Deposition of Plaintiff Surgical Instrument Service Company, Inc., Pursuant to Fed. R. CIV. P. 30(b)(6)
Exhibit 136	57	Email chain with attachments, Bates numbers SIS095115 through SIS095139

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1 information did SIS have about Rebotix's capabilities 09:29:34

2 when SIS started its relationship with Rebotix? 09:29:41

3 MR. VAN HOVEN: Objection to form. 09:29:45

4 THE WITNESS: Can you ask that again, I 09:29:46

5 apologize. 09:29:51

6 BY MR. CHAPUT? 09:29:52

7 Q Sure. Maybe I can make it a little more 09:29:52

8 straightforward. 09:29:56

9 What did SIS know about Rebotix's 09:29:57

10 capabilities when it entered into the EndoWrist repair 09:29:59

11 business? 09:30:05

12 MR. VAN HOVEN: Objection to form. 09:30:05

13 THE WITNESS: So, based on our 09:30:05

14 longstanding relationship with Benjamin Biomedical, and 09:30:11

15 the quality products that they had been providing to us 09:30:16

16 for, like I said, over 25 years, we had every belief 09:30:19

17 that the products and services they were providing were 09:30:24

18 quality, and we went down, visited the lab, made sure 09:30:27

19 that we understood and saw the product that they were 09:30:32

20 developing and the service that they were providing, 09:30:36

21 felt really good about it, and were excited about it, 09:30:39

22 and learned everything we could about their testing 09:30:42

23 practices and what they were doing, and really pretty 09:30:45

24 much everything inside and out about that program 09:30:49

25 before we took it to market. 09:30:52

1 BY MR. CHAPUT: 09:30:52

2 Q Have you ever observed the entirety of 09:30:56

3 what Rebotix calls a repair of an EndoWrist? 09:31:01

4 A Yes. 09:31:07

5 MR. VAN HOVEN: Object to form. 09:31:08

6 THE WITNESS: Yes. 09:31:08

7 BY MR. CHAPUT: 09:31:09

8 Q When did you observe that repair? 09:31:11

9 A I don't remember the specific dates, but 09:31:15

10 if I remember correctly, it was in the fall of '19. 09:31:24

11 Q And would you describe for me the repair 09:31:30

12 process that Rebotix performed that you observed? 09:31:42

13 A We observed the complete incoming 09:31:48

14 inspection process; we observed the chip replacement 09:31:55

15 process; and we also observed the complete outgoing 09:32:03

16 safety and function test of those devices. 09:32:08

17 Q Starting with the complete incoming 09:32:12

18 inspection that you observed, what steps were involved 09:32:24

19 in that incoming inspection? 09:32:27

20 A Being that that device is a very simple 09:32:33

21 laparoscopic instrument, we observed the functionality 09:32:39

22 of that device, the strength of the pulleys, the 09:32:43

23 sharpness of the scissors, the -- the grasping strength 09:32:48

24 of the forceps, all of those safety and function to 09:32:53

25 make sure that those devices met the original intended 09:32:57

1 did not take any other steps to confirm that the chip 09:44:47

2 replacement process did not impact the EndoWrist's 09:44:51

3 safety? 09:44:53

4 A Not that I'm aware of. 09:45:01

5 Q Did SIS ever enter into a written 09:45:06

6 agreement with Rebotix regarding this EndoWrist 09:45:09

7 service? 09:45:12

8 A I believe that we did. 09:45:21

9 Q And when -- when would that have happened? 09:45:22

10 A If I remember correctly, it was October of 09:45:30

11 '19. 09:45:32

12 Q Apart from the EndoWrist business that 09:45:50

13 you've been describing, has SIS had any other business 09:45:53

14 relationship with Rebotix specifically? 09:45:55

15 A Not that I know of. 09:46:01

16 Q Can you -- can you walk me through how the 09:46:04

17 Rebotix Repair service worked from the SIS customer's 09:46:14

18 perspective, please. 09:46:18

19 A Can -- can you elaborate what you mean? 09:46:19

20 Q Sure. 09:46:26

21 So how did a customer go about having a -- 09:46:26

22 an EndoWrist repaired through this SIS Rebotix program 09:46:30

23 that you've described? 09:46:36

24 A So the nature of our business, we're a 09:46:36

25 national company, so we work in all the regions around 09:46:44

1 the country, so we have team members and reps on the 09:46:48  
2 ground, and we work with hospitals on a daily basis 09:46:51  
3 picking up items and devices in need of service, 09:46:54  
4 getting those to one of our labs, they are serviced and 09:46:57  
5 then returned to the facility. 09:47:02

6 So this Rebotix program that we were 09:47:03  
7 providing fell right in line with what we were doing 09:47:05  
8 every day. 09:47:10

9 Q Was the service performed at one of SIS's 09:47:10  
10 labs? 09:47:16

11 MR. VAN HOVEN: Objection to form. 09:47:18

12 THE WITNESS: We were -- every discussion 09:47:19  
13 we had was about bringing it in-house and doing it 09:47:27  
14 ourselves. In fact, a couple members of their team 09:47:29  
15 came to Chicago and worked in our lab with us, and 09:47:37  
16 our -- some of our technicians that were going to be 09:47:41  
17 involved in this program were part of that, so we were 09:47:44  
18 absolutely going to be doing this service in-house. 09:47:48

19 BY MR. CHAPUT: 09:47:51

20 Q Okay. So you said that you were "going to 09:47:51  
21 be doing it in-house." 09:47:53

22 My question was: Did SIS ever actually 09:47:54  
23 perform the service in-house? 09:47:57

24 A No. 09:47:58

25 Q So for all of the EndoWrist repairs that 09:48:00



1 testing process? 10:06:18

2 A I'm not involved in the engineering and 10:06:18

3 the technical side of that, so what I'm personally 10:06:26

4 providing is more of a customer feedback, customer 10:06:29

5 thoughts, customer interest in that program, and what 10:06:35

6 it would mean to health care. 10:06:38

7 Q Describe for me the customer feedback and 10:06:39

8 customer thoughts, customer interests in that program, 10:06:47

9 please. 10:06:50

10 A How much time do we have? 10:06:50

11 Q Describe it at a high level to start with, 10:06:54

12 and we can -- 10:06:58

13 A Since this program started, the interest 10:07:01

14 from the hospital is monumental, through the roof. 10:07:03

15 The -- the interest in saving and reducing costs on 10:07:11

16 robotic surgery in the industry is something I've never 10:07:15

17 seen before in my 25 years of being in the surgical 10:07:17

18 business. 10:07:22

19 Q What hospitals have you spoken with about 10:07:23

20 the Xi program? 10:07:27

21 A Would you like me to list them? 10:07:29

22 Q Yes, please. 10:07:35

23 A This will be from the top of my head, so 10:07:36

24 I'll do the best I can, but well over -- the meetings 10:07:40

25 that we've had represent well over a thousand 10:07:46

1 hospitals, probably. 10:07:48

2 Facility level, I'll just start to kind of 10:07:53

3 name them off regionally. Legacy Health system in 10:07:56

4 Portland, Oregon; Providence health system in the West 10:08:00

5 Coast; Sutter Health; Kaiser Permanente; memorial care; 10:08:04

6 the UC system in California; Banner Health System; 10:08:16

7 Honor Health; Baylor Scott & White in Texas; the 10:08:21

8 university health systems across the country, from 10:08:31

9 Michigan to Duke to North Carolina; Mayo Clinic; 10:08:35

10 Cleveland Clinic; Advocate Aurora; Lahey Health System; 10:08:50

11 Boston Children's Medical Center. 10:08:55

12 I can't believe I'm remembering all this 10:08:57

13 off the top of my head. 10:09:00

14 Piedmont health system, Grady in Atlanta, 10:09:02

15 Johns Hopkins. 10:09:13

16 That's the bulk of the direct hospitals 10:09:14

17 that I can recall having direct conversations with; 10:09:25

18 there's obviously much more than that. 10:09:27

19 And then, in addition to that, all the 10:09:29

20 Vizient conversations we've had, I've presented to all 10:09:33

21 four regions of Vizient, which basically covers well 10:09:41

22 over 2,000 hospitals in the United States. 10:09:45

23 Q Have you spoken with any of those 10:09:48

24 hospitals about the need for an EndoWrist repair 10:10:09

25 program to have FDA clearance? 10:10:11

1           A       I don't know if I understand what you're       10:10:20  
2       asking me.       10:10:21

3           Q       Have any of those hospitals told you that       10:10:22  
4       they would be willing to purchase EndoWrist repair       10:10:29  
5       services that were not cleared by the FT -- FDA?       10:10:33

6                   MR. VAN HOVEN:    Objection to form.       10:10:40

7                   MR. SNYDER:    Objection to form.       10:10:42

8                   THE WITNESS:    So I've been in the repair       10:10:42  
9       business for well over 20 years, repairs don't require       10:10:44  
10      FDA clearance, and to my recollection, nobody in any of       10:10:49  
11      my conversations every brought up FDA clearance on the       10:10:58  
12      repair.       10:11:01

13      BY MR. CHAPUT:       10:11:02

14           Q       Does the Xi -- maybe let's -- let's step       10:11:02  
15      back.       10:11:05

16                   Does the Xi repair business that SIS is       10:11:06  
17      exploring with Restore involve extending the number of       10:11:12  
18      lives that an EndoWrist can be used for?       10:11:18

19           A       We are currently working on developing a       10:11:20  
20      program to extend the life of Xi instruments.       10:11:31

21           Q       And is that the program that you have       10:11:34  
22      spoken with hospitals about?       10:11:36

23           A       The initial conversations we had with       10:11:47  
24      hospitals was around the repair program of Si.       10:11:49  
25                   We then went to our recovery program,       10:11:57

1 BY MR. CHAPUT: 11:47:09

2 Q And this is an email from you to a couple 11:47:09

3 folks at Vizient; is that right? 11:47:13

4 A Yes. 11:47:16

5 Q And what is Vizient? 11:47:21

6 A The largest GPO in the United States. 11:47:26

7 Q SIS has a relationship with Vizient; is 11:47:28

8 that right? 11:47:33

9 A Correct. 11:47:33

10 Q How does that -- how does the Vizient 11:47:33

11 relationship work for SIS? 11:47:42

12 A What -- what do you mean? 11:47:46

13 Q So what I'm trying to get at is how does 11:47:47

14 SIS end up performing services for specific customers 11:47:55

15 in the -- who -- who rely on Vizient for -- as a GPO? 11:48:02

16 A So Vizient -- Vizient contracts with 11:48:07

17 vendors from all aspects in a hospital, from toilet 11:48:12

18 paper to X-ray machines and security, they vet their 11:48:16

19 vendors, they go through a huge vetting process. 11:48:23

20 We are one of three vendors on Vizient 11:48:25

21 national contract in the instrument repair space, and 11:48:29

22 what they basically do is work with hospitals to find 11:48:35

23 ways to streamline services, reduce costs, and a lot of 11:48:38

24 other things, but that's really their main goal. 11:48:45

25 Q Okay. So a Vizient member can choose to 11:48:49

1 enter into a contract with SIS for repair services or 11:48:51  
2 it could choose another one of the Vizient service 11:48:55  
3 providers; is that right? 11:48:59

4 MR. VAN HOVEN: Objection to form. 11:49:00

5 THE WITNESS: As far as I understand, 11:49:00  
6 correct. 11:49:05

7 BY MR. CHAPUT: 11:49:06

8 Q What was the -- what was the reason for 11:49:10  
9 your June 2020 email to Vizient that we're seeing in 11:49:13  
10 Exhibit 137? 11:49:19

11 A I was given the opportunity present to the 11:49:20  
12 national committee -- if I remember correctly, this was 11:50:00  
13 a presentation to the national Vizient consultants that 11:50:05  
14 bring cost savings opportunities to their members. 11:50:13

15 Q Got it. 11:50:19

16 If you would turn, please, to the first 11:50:20  
17 attachment to the email, which is the -- a one-page 11:50:21  
18 document ending 140, and this has the title "Beyond 11:50:25  
19 Repair Double Check." 11:50:25

20 Do you recognize this document? 11:50:34

21 A Yes. 11:50:39

22 Q Does the beyond repair double check 11:50:39  
23 program have anything to do with either da Vinci 11:50:41  
24 surgical systems or EndoWrists? 11:50:44

25 A No. 11:50:50

1 for identification and is attached 12:24:02

2 hereto.) 12:24:02

3 BY MR. CHAPUT: 12:24:02

4 Q And this is an email chain between you and 12:24:06

5 John Ayers and others at MarinHealth; is that right? 12:24:09

6 A Yes. 12:24:13

7 Q Who is John Ayers? 12:24:13

8 A John Ayers is the OR business manager at 12:24:16

9 MarinHealth. 12:24:24

10 Q Did SIS market its ability to perform 12:24:28

11 endo -- repairs on EndoWrist instruments to 12:24:31

12 MarinHealth? 12:24:35

13 A Yes. 12:24:36

14 Q Did MarinHealth and Mr. Ayers ultimately 12:24:37

15 agree to use SIS to perform repairs on EndoWrist 12:24:44

16 instruments? 12:24:48

17 A Yes, we did a lot of EndoWrists for 12:24:49

18 MarinHealth. 12:24:53

19 Q Over what period? 12:24:53

20 A I don't remember specifically, but I would 12:24:55

21 say 90 days-ish. 12:25:02

22 Q And how many instruments did you service 12:25:05

23 for MarinHealth? 12:25:07

24 A I would guess in the range of 50 to 60. 12:25:08

25 Q Did you have a signed agreement with Marin 12:25:15

1 for that business? 12:25:21

2 A Not initially, no, it was kind of a trial, 12:25:21

3 we were doing a trial to make sure they liked it. 12:25:25

4 Q And you said "not initially." 12:25:28

5 Was there an agreement for that business 12:25:30

6 that you entered into with MarinHealth later? 12:25:32

7 A There would have absolutely been an 12:25:35

8 agreement in place until Intuitive shut us down. 12:25:37

9 Q If you would turn to the page ending 545, 12:25:40

10 there's an email in the middle of this page from you to 12:26:05

11 Mr. Ayers dated November 19, 2019. 12:26:07

12 A Okay. 12:26:16

13 Q And in the middle of that email, you say 12:26:16

14 (as read): 12:26:16

15 We are working with a large -- a 12:26:20

16 number of the largest health care 12:26:22

17 organizations in the U.S. 12:26:23

18 And then you list Banner Health, Kaiser 12:26:24

19 Permanente, Legacy Health, Advocate Aurora Health, and 12:26:28

20 Piedmont Healthcare. 12:26:32

21 As of November 2019, was SIS providing 12:26:33

22 services to any of those organizations relating to 12:26:37

23 EndoWrist instruments? 12:26:43

24 A All of them. 12:26:50

25 Q And, in response, on Monday, November 25, 12:26:51

1       2019, Mr. Ayers wrote to you -- oh, I apologize, I was       12:27:06  
2       looking at the wrong email.       12:27:16  
3               If you would turn to page ending 544, I'm       12:27:18  
4       looking at the email from Mr. Ayers on November 25,       12:27:22  
5       2019, at 1:43 p.m. where he asks (as read):       12:27:26  
6               Keith, how do the other hospitals       12:27:30  
7       get past the Intuitive contract language       12:27:32  
8       regarding proprietary instruments?       12:27:34  
9       Do you see that question?       12:27:37  
10       A       What page was that again?       12:27:38  
11       Q       544.       12:27:47  
12       A       Okay, yes, I see it.       12:27:50  
13       Q       And you responded in an email that same       12:27:53  
14       day at 1:07 p.m. (as read):       12:27:57  
15               Our service is, quote, repairing,       12:28:01  
16       unquote, an Intuitive instrument. We are       12:28:04  
17       not changing the instrument in any way       12:28:06  
18       from its intended use or designed       12:28:09  
19       functionality.       12:28:11  
20       Do you see that statement? This is on       12:28:13  
21       543.       12:28:19  
22       A       Okay. I was going the wrong direction.       12:28:20  
23       Yes, I see it.       12:28:23  
24       Q       Okay. And what was the basis for your       12:28:24  
25       statement that SIS was not changing the instrument in       12:28:27

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1 Q Did SIS ever facilitate any EndoWrist 12:34:41  
2 repair services for Vizient members? 12:34:45

3 A Absolutely. 12:34:47

4 Q Which -- which Vizient members were those? 12:34:47

5 A Legacy, Legacy Health, Kaiser Permanente, 12:34:52  
6 Piedmont, most of the our other big clients are 12:35:06  
7 Premiere, they're not Vizient, so -- if you want -- if 12:35:20  
8 you're asking me actual repairs done, I think those are 12:35:24  
9 the three big ones. 12:35:28

10 MR. CHAPUT: Okay. So, Mr. Johnson, I 12:35:39  
11 don't have any more questions at this point on the 12:35:41  
12 30(b)(6) notice. We are going continue with your 12:35:42  
13 deposition in your personal capacity, but we can go 12:35:45  
14 ahead and take a break before we do that. 12:35:48

15 MR. SNYDER: Isaac, Josh Snyder, I do have 12:35:55  
16 a few questions, very few, but I'm happy to save them 12:35:58  
17 all till the end in the interest of efficiency. You 12:36:01  
18 may cover them in the next part anyway. 12:36:06

19 MR. CHAPUT: Sure, that's fine, Josh. 12:36:08

20 MR. SNYDER: Thank you. 12:36:11

21 VIDEOGRAPHER PERAZA: This is the end of 12:36:12  
22 today's deposition of SIS by Mr. Keith Johnson. We are 12:36:14  
23 off the record at 12:36 p.m. 12:36:17

24 The total number of media used was four, 12:36:21  
25 and will be retained by Veritext. 12:36:25